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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86706; File No. SR-FINRA-2019-019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Expand OTC Equity Trading Volume Data Published on FINRA's Website

August 19, 2019.

I. Introduction

On July 1, 2019, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA Rules 6110 and 6610 to expand the summary firm data relating to over-the-counter ("OTC") equity trading that FINRA publishes on its website. The proposed rule change was published for comment in the Federal Register on July 11, 2019.³ The Commission received two comment letters in support of the proposed rule change.⁴ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86315 (July 5, 2019), 84 FR 33098 (July 11, 2019) ("Notice").

⁴ See letters to Vanessa Countryman, Secretary, Commission from: Ray Ross, Chief Technology Officer, Clearpool Group ("Clearpool"), dated August 1, 2019 ("Clearpool Letter"); Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities ("Citadel"), dated August 1, 2019 ("Citadel Letter").

II. Description of the Proposal

Currently, FINRA publishes certain volume information for OTC transactions in NMS stocks⁵ and OTC Equity Securities,⁶ that are executed outside of an alternative trading system (“ATS”).⁷ All published data is derived directly from OTC transactions reported to a FINRA equity trade reporting facility. FINRA does not charge a fee for this data.⁸

Currently, FINRA publishes weekly non-ATS OTC volume information (number of trades and shares) by firm and by security on a two-week or four-week delayed basis. Weekly security-specific information for transactions in NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility (“Tier 1 NMS stocks”) is published on a two-week delayed basis, while information on the remaining NMS stocks (“Tier 2 NMS stocks”) and OTC Equity Securities is published on a four-week delayed basis. FINRA also publishes aggregate weekly non-ATS volume totals by firm and category of security (Tier 1 NMS stocks, Tier 2 NMS stocks, and OTC Equity Securities) on the same timeframes, as well as aggregate non-ATS volume totals by firm for all NMS stocks and OTC Equity Securities, for each calendar month on

⁵ “NMS stock” is defined in Rule 600(b)(47) of the Commission’s Regulation NMS. See 17 CFR 242.600(b)(47).

⁶ “OTC Equity Security” means any equity security that is not an NMS stock, other than a Restricted Equity Security. See FINRA Rule 6420(f). A “Restricted Equity Security” means any equity security that meets the definition of “restricted security” as contained in Securities Act Rule 144(a)(3). See FINRA Rule 6420(k); 17 CFR 230.144(a)(3).

⁷ FINRA Rules 6110(b) and 6610(b) govern the publication of information for OTC transactions executed outside of an ATS (“non-ATS” volume data or information). FINRA Rules 6110(c) and 6610(c) separately govern the publication of trading information for OTC transactions executed on ATSs.

⁸ OTC transaction volume data published pursuant to FINRA Rules 6110 and 6610 is available at <https://otctransparency.finra.org/otctransparency/>.

a one-month delayed basis.⁹ All data is published by firm on an attributed basis¹⁰ except that, for firms executing fewer than 200 non-ATS transactions per day on average during the reporting period,¹¹ FINRA combines and publishes the volume for these firms on an aggregate non-attributed basis identified in the published data as “De Minimis Firms.”¹²

FINRA has proposed to expand, in two ways, the summary firm data relating to non-ATS OTC equity trading that FINRA publishes on its website. First, FINRA would publish new monthly aggregate block-size trading data for non-ATS OTC trades in NMS stocks, on the same terms as FINRA currently publishes aggregate block-size trading data for trades in NMS stocks occurring on ATSs. Second, FINRA would eliminate the current de minimis exception for publication of aggregate non-ATS trading volume across all NMS stocks and OTC Equity Securities, and publish each firm’s aggregate non-ATS volume on an attributed basis. Each component of the proposed rule change is addressed below.

Non-ATS Block-Size Trading Data

Pursuant to its Rule 6110(c)(2), FINRA currently publishes monthly information on block-size trades in all NMS stocks occurring on ATSs. Data regarding block-size trades on ATSs is aggregated across all NMS stocks (i.e., there is no security-by-security block data), are

⁹ Monthly aggregated data are categorized by NMS stocks and OTC Equity Securities, i.e., there is no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks.

¹⁰ Non-ATS data is published at the firm level, aggregating each market participant identifier (“MPID”) used by a particular firm (but excluding any MPIDs used by a firm to report trades executed on its ATS).

¹¹ For a firm with multiple non-ATS MPIDs, the total volume across all its MPIDs is combined for purposes of determining whether the de minimis threshold has been met.

¹² There is no parallel de minimis exception for ATS transactions under FINRA Rules 6110(c) and 6610(c). Therefore, all ATS volume data is currently published on an attributed basis.

for a time period of one month of trading, and are published no earlier than one month following the end of the month for which trading was aggregated.

FINRA currently publishes information on block-size ATS trades in NMS stocks using share-based thresholds, dollar-based thresholds, and thresholds that include both shares and dollar amount as follows:

- 10,000 or more shares;
- \$200,000 or more in dollar value;
- 10,000 or more shares and \$200,000 or more in dollar value;
- 2,000 to 9,999 shares;
- \$100,000 to \$199,999 in dollar value; and
- 2,000 to 9,999 shares and \$100,000 to \$199,999 in dollar value.¹³

For each of these categories, FINRA publishes monthly trade count and volume information for each ATS, on an attributed basis, aggregated across all NMS stocks with no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks. FINRA also calculates and displays the average trade size and each ATS's rank as well as "ATS Block Market Share" (*i.e.*, the proportion of each ATS's block-size trading volume in relation to total block-size trading by all ATSs) and "ATS Block Business Share" (*i.e.*, the proportion of a particular ATS's overall trading volume that was done as block-size trades) and rankings of those metrics for each of the above categories.¹⁴

¹³ See FINRA Regulatory Notice 16-14 (April 2016) (Alternative Trading Systems).

¹⁴ ATS block-size data can be viewed at <https://otctransparency.finra.org/otctransparency/AtsBlocks>. The data may also be directly downloaded through the OTC Transparency Data webpage, <https://otctransparency.finra.org/otctransparency/AtsBlocksDownload>.

FINRA has proposed to expand the block-size trading data that it publishes on its website to include monthly aggregate block-size trading data for all OTC trades in NMS stocks, regardless of whether they are ATS or non-ATS trades.¹⁵ The new block-size data for non-ATS OTC trades would be published on the same terms as block-size data is currently published for ATS trades, and FINRA would not charge a fee for the new data. Specifically, proposed paragraph (b)(3) of FINRA Rule 6110 provides that non-ATS block-size data would be published in aggregate across all NMS stocks (i.e., there would be no security-by-security block data), would be for a time period of one month of trading, and would be published no earlier than one month following the end of the month for which trading was aggregated. All published data would be derived directly from OTC trades reported to a FINRA trade reporting facility and would not create any new requirements for FINRA members.

Pursuant to proposed FINRA Rule 6110(b)(3), FINRA would publish the new non-ATS block-size data with elements to be determined from time to time by FINRA in its discretion, as stated in a Regulatory Notice or other equivalent publication. As with current block-size data regarding ATS OTC trades, non-ATS block-size data will be published using the same share-based, dollar-based, and combination share- and dollar-based thresholds used for ATS block-size data, as described above. For each category, FINRA would publish monthly trade count and volume information for each firm, on an attributed basis, aggregated across all NMS stocks with

¹⁵ In developing its proposal to publish non-ATS block-size data, FINRA discussed the initiative with a number of its industry advisory committees, informally consulted a number of firms, and solicited written comment. FINRA stated that firms were generally supportive of publishing non-ATS block-size data, which would provide enhanced transparency into the OTC market as a complement to the currently published ATS block-size data. See Notice, 84 FR at 33099. FINRA also stated that several firms raised potential information leakage concerns involved with publishing new block-size data, but indicated that such concerns would be mitigated by publishing data on an aggregated basis, rather than security-by-security, and by delaying publication. See id.

no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks.¹⁶ Each firm that engages in block-size non-ATS trading of NMS stocks would be separately identified, i.e., FINRA is not proposing any de minimis exception for non-ATS block-size data. FINRA also would calculate and display the average trade size and each firm's rank as well as "Firm Block Market Share" (i.e., the proportion of each firm's block-size trading volume in relation to total block-size trading by all firms) and "Firm Block Business Share" (i.e., the proportion of a particular firm's overall trading volume that was done as block-size trades) and rankings of those metrics for each of the above categories.¹⁷

Elimination of the De Minimis Exception

FINRA has proposed to eliminate the current de minimis exception for publication of aggregate non-ATS OTC trading volume, and instead publish on an attributed basis each firm's aggregate non-ATS OTC volume (number of trades and shares) on a weekly or monthly basis, as applicable.¹⁸

FINRA also proposed several other technical, non-substantive, and conforming changes

¹⁶ FINRA has not proposed at this time to publish non-ATS block-size data for trading in OTC Equity Securities. In the Notice, FINRA stated that it will continue to assess whether block-size trading data should be expanded to include trades in OTC Equity Securities or a subset thereof. See Notice, 84 FR at 33099, n. 15.

¹⁷ In the Notice, FINRA stated that it will announce any changes to these elements in advance in a Regulatory Notice or similar publication.

¹⁸ However, FINRA has not proposed to eliminate the de minimis exception for purposes of the security-specific non-ATS OTC volume data under FINRA Rules 6110(b)(2)(C) and 6610(b)(2)(C). Therefore, if a firm averages fewer than 200 non-ATS OTC transactions per day in a given security during the reporting period, FINRA would continue to aggregate the firm's volume in that security with that of similarly situated firms, and there would continue to be a De Minimis Firms category for published security-by-security volume data.

to the current rule text.¹⁹

FINRA has stated that it will announce the effective date of the proposed rule change in a Regulatory Notice following a Commission approval, and the effective date of the proposed rule change will be no earlier than October 1, 2019, and no later than March 31, 2020.²⁰ FINRA anticipates that it will begin publication of data in accordance with the proposed rule change in the fourth quarter of 2019.²¹

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.²² In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,²³ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

¹⁹ FINRA proposed to amend Rules 6110(b)(1)(A) and (B) and 6610(b)(1)(A) to clarify that those provisions apply to the publication of aggregate weekly trading information, which will conform to language in current Rules 6110(c) and 6610(c). FINRA further proposed to amend Rules 6110(b)(2)(B) and 6610(b)(2)(B) (as re-designated by the proposed rule change) to clarify that the remaining de minimis exceptions under those provisions apply to trading information by security. Finally, FINRA proposed to amend the final sentence of Rule 6610(b)(3) to correct the cross-reference to the definition of “ATS Trading Information.”

²⁰ See Notice, 84 FR at 33100.

²¹ See id.

²² In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78o-3(b)(6).

The Commission previously found that the earliest iteration of FINRA's publication protocols for ATS OTC trade data were consistent with the Act.²⁴ Several commenters on that initial proposal urged FINRA to broaden its publication protocols to include non-ATS OTC trading centers, not only ATSS. FINRA responded that "it considered various alternatives and concluded that ATS trade information was an appropriate first step toward increased transparency in the off-exchange OTC market. FINRA stated further that it would consider additional steps, including those suggested by the commenters, in the future."²⁵

Subsequently, in 2015, FINRA proposed to expand transparency of OTC equity trading data by publishing certain information regarding non-ATS OTC trading.²⁶ At that time, however, FINRA did not believe that publishing volume information for each firm that executed only a small number of trades or shares in any given period would provide meaningful information to the marketplace.²⁷ Therefore, FINRA proposed to combine volume from all members that did not meet a specified minimum threshold and publish such information for those members on an aggregated basis.²⁸ The Commission approved the proposed rule change

²⁴ See Securities Exchange Act Release No. 71341 (January 17, 2014), 79 FR 4213, 4217 (January 24, 2014) (Order Approving SR-FINRA-2013-042). FINRA subsequently expanded the scope of the ATS OTC trade data that it publishes on its website. See Securities Exchange Act Release No. 76931 (January 19, 2016), 81 FR 4076 (January 25, 2016) (SR-FINRA-2016-002) (immediate effectiveness of proposed rule change relating to ATS volume and trading information).

²⁵ Order Approving SR-FINRA-2013-042, 79 FR at 4215 (citation omitted).

²⁶ See Securities Exchange Act Release No. 75356 (July 2, 2015), 80 FR 39463 (July 9, 2015) (Notice of SR-FINRA-2015-020).

²⁷ See id., 80 FR at 39464.

²⁸ See id.

because publishing this data, even though not to the same degree of granularity as ATS OTC trade data, would facilitate better understanding of the OTC equity market.²⁹

FINRA is now proposing to apply to non-ATS OTC trade data more of the publication protocols that it currently applies to ATS OTC trade data. Specifically, FINRA will publish new monthly aggregate block-size trading data for non-ATS OTC trades in NMS stocks, on the same terms as FINRA currently publishes aggregate block-size trading data for ATS trades in NMS stocks. Second, FINRA will eliminate the de minimis exception for publication of aggregate non-ATS trading volume across all NMS stocks and OTC Equity Securities, and publish each firm's aggregate non-ATS volume on an attributed basis. The Commission believes that the proposal will enhance transparency in the OTC equity market by making additional trading volume data available on FINRA's website in a manner reasonably designed to avoid adverse market impact, and without imposing any new requirements, on FINRA members. Therefore, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities association. The Commission notes that it received no comments objecting to the proposal.³⁰

²⁹ See Securities Exchange Act Release No. 76078 (October 5, 2015), 80 FR 61246, 61247-49 (October 9, 2015) (Order Approving SR-FINRA-2015-020).

³⁰ Two commenters generally supported the proposal while suggesting ways to further expand publication of non-ATS OTC trade data. Clearpool suggested that FINRA eliminate the de minimis exception for purposes of the security-specific non-ATS volume data as well as separately identifying a firm's volume of trading on a single-dealer platform. See Clearpool Letter at 2. Citadel suggested that FINRA separate the monthly aggregate block-size trading data into ETF and non-ETF categories to maximize the granularity and utility of the data. See Citadel Letter at 1. In response to these comments, FINRA stated that it "continue[s] to consider further enhancements to the OTC volume information published on our website and we would consider these suggestions as part of potential future changes, but we would not plan to include them in this filing." E-mail to David Michehl, Special Counsel, Commission, from Robert McNamee, Assistant General Counsel, FINRA (dated August 8, 2019).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-FINRA-2019-019) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Jill M. Peterson,
Assistant Secretary.

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).

